



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

AUG 23 4 47 PM '05

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 05-2334

Released: August 19, 2005

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF CERTAIN ASSETS OF VARTEC TELECOM AND ITS SUBSIDIARIES TO COMTEL TELECOM ASSETS AND COMTEL VIRGINIA

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-260

Comments Due: September 2, 2005

Reply Comments Due: September 9, 2005

On August 4, 2005, Comtel Telecom Assets LP ("Comtel Telecom") and Comtel Virginia LLC ("Comtel Virginia") (together, "Comtel"), and VarTec Telecom, Inc. ("VarTec Telecom"), Excel Telecommunications, Inc., ("Excel"), and VarTec Solutions, Inc. ("VarTec Solutions") (together, "VarTec") (collectively with Comtel, the "Applicants"), filed an application pursuant to sections 63.03 and 63.04 of the Commission's rules¹ requesting approval to transfer control of the assets of VarTec to Comtel. Both Comtel Telecom and Comtel Virginia seek approval as transferees for the proposed transfer of assets used in the provision of domestic telecommunications. Commission approval for the assignment of international Section 214 authority is sought only for Comtel Telecom as assignee.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(1)(ii) of the Commission's rules because the Applicants are non-facilities-based carriers, and the proposed transferees are not currently telecommunications providers. In addition, Applicants state that the application qualifies for presumptive streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's rules because, post-consummation, (i) Comtel will have less than a 10% market share in the interstate interexchange market; (ii) Comtel will provide telephone exchange services or exchange access services (if at all) exclusively in

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

geographic areas served by a dominant local exchange carrier that is not a party to the proposed transaction; and (iii) none of the Applicants is dominant with respect to any service.³

VarTec Telecom and Excel are Texas corporations. VarTec Solutions is a Delaware corporation.⁴ VarTec provides resold international interexchange services on a global basis. VarTec Telecom and Excel provide intrastate and interstate domestic interexchange services within and throughout the United States, and local exchange and exchange access services in every state except Alaska,⁵ Connecticut, Hawaii, Rhode Island and Virginia. VarTec Solutions provides intrastate and interstate interexchange services within the contiguous United States⁶ and is authorized to provide local exchange and exchange access services in a limited number of states.⁷

Comtel Telecom is a Texas limited partnership, and Comtel Virginia is a Virginia limited liability company. Both transferees are new entrants in the domestic and international telecommunications markets, and are non-dominant. Comtel Virginia is wholly-owned by Comtel Telecom. Comtel Telecom's limited partner, Comtel Assets Inc., is a Texas corporation and controls 1% of the equity of Comtel Telecom. Comtel Assets Corp., a Delaware corporation, is Comtel Telecom's limited partner and controls 99% of the equity. Both Comtel Assets Inc. and Comtel Assets Corp. are wholly-owned by Sowood Commodity Partners Fund III LP ("Sowood Fund III"), a Delaware limited partnership, whose general partner is Sowood Commodity Partners GP III LP ("Sowood GP III LP"), also a Delaware limited partnership, which controls 0.2% of the equity of Sowood Fund III. The remaining equity of Sowood Fund III is held by Harvard Private Capital Holdings, which in turn is owned and controlled by the President and Fellows of Harvard College, a tax-exempt educational and research institution. The limited partners of Sowood GP III LP are Jeff Larson (19%), Rick Dowd (5%), Stu Porter (70%) and Megan Kelleher (5%), each of whom is a U.S. citizen. The general partner of Sowood GP III LP, with a 1% interest and operating control, is Sowood GP III LLC, a Delaware limited liability company, whose sole managing member is Jeff Larson. Rick Dowd, Stu Porter and Megan Kelleher are the three non-managing members of Sowood GP III LLC. No other entity

³ 47 C.F.R. § 63.03(b)(1)(ii), and 47 C.F.R. § 63.03(b)(2)(i).

⁴ VarTec Solutions formerly operated under the following corporate names: Emeritus Communications, Inc.; Teleglobe Business Solutions, Inc.; and Telco Holdings, Inc., d/b/a Dial & Save.

⁵ VarTec provides interexchange services under the trade name Clear Choice Communications in all jurisdictions, except Alaska.

⁶ While VarTec Solutions provides interstate interexchange services throughout the U.S., the company's authority to provide intrastate interexchange services is limited to the contiguous United States.

⁷ Although VarTec Solutions has not yet commenced providing local exchange or exchange access services in any jurisdiction, it holds the authority to provide local exchange services in the following states: Alabama, California, Colorado, Florida, Illinois, Indiana, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Utah, West Virginia, Wisconsin and Wyoming.

holds a 10% or greater interest in Comtel.

VarTec voluntarily filed for Chapter 11 bankruptcy protection on November 1, 2004 in the Dallas Division of the U.S. Bankruptcy Court for the Northern District of Texas (the "Court"). VarTec is currently operating under bankruptcy protection and, through a Court-approved auction process, entered into an asset purchase agreement (the "APA") with Comtel on July 25, 2005. The Bankruptcy Court approved the APA on July 27, 2005.⁸ Pursuant to the terms of the APA, VarTec has agreed to sell to Comtel substantially all of its assets, including all of its telecommunications equipment, customer accounts and records, business records, and licenses and permits.⁹ The APA provides that the ultimate transfer of the acquired telecommunications and operating assets is subject to necessary regulatory approvals, including the approval of this application. Once the proposed transaction is completed, VarTec will no longer hold Section 214 authorizations to provide telecommunications services. The domestic authorizations will be assigned to Comtel, and the international authorizations will be assigned to Comtel Telecom, so that the residential and business customers previously served by VarTec will continue to receive services without interruption.¹⁰

Applicants assert the proposed transaction will serve the public interest, convenience and necessity by enabling the seamless continuation of telecommunications services to VarTec's existing customers. Applicants state that, by allowing Comtel to assume control of VarTec's assets and authorizations, existing customers will have access to the services they enjoy today, improved levels of service, and expanded service offerings. Due to financial restrictions, VarTec has performed extremely limited marketing, product research and other customer retention and acquisition efforts during 2004 and 2005. Such restrictions have minimized the competitive offerings introduced to the public, and limited VarTec's ability to invest in their services. Moreover, Applicants assert that approval of the proposed transaction can be expected to serve the public interest by stimulating increased competition in the domestic and international telecommunications markets.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return

⁸ See Case No. 04-81694-SAF-11, Order Granting Motion (A) Approving the Sale Free and Clear of All Liens, Claims, Rights, Interests and Encumbrances to Comtel Investments, LLC and (B) Granting Related Relief (Substantially All of the Debtors' Remaining Assets) (entered July 29, 2005), available at http://docs.bmccorp.net/Vartec/docs/txnb_3-04-bk-8164_1663.pdf. Comtel Investments LLC, which is wholly-owned by the same parties who own and control Comtel, has assigned its rights and obligations under the Asset Purchase Agreement to Comtel.

⁹ Due to specific requirements for public utilities operating within Virginia, Comtel Virginia will hold certain assets and service customer accounts in Virginia obtained through the asset purchase.

¹⁰ Comtel will provide the required notices to affected subscribers and the Commission in accordance with Section 64.1120(e) of the Commission's rules.

any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before September 2, 2005** and **reply comments on or before September 9, 2005**.¹¹ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.¹² Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service

¹¹ See 47 C.F.R. § 63.03(a).

¹² Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; email: tracey.wilson-parker@fcc.gov;
- (3) Renée R. Crittendon, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C311, Washington, D.C. 20554; e-mail: renee.crittendon@fcc.gov;
- (4) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C317, Washington, D.C. 20554; e-mail: alexis.johns@fcc.gov;
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (6) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-

B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Alex Johns at (202) 418-1167.

- FCC -